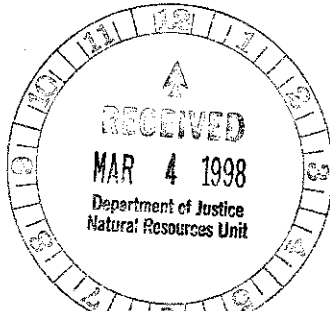


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DATE: March 4, 1998

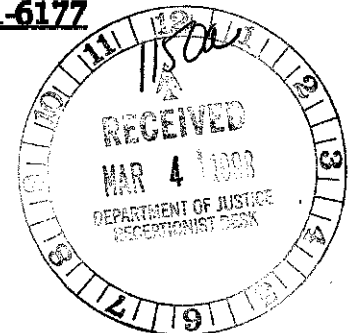
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TO: PLEASE DELIVER TO Stanley Pollack / (520) 871-6177

SHEEHAN,
SHEEHAN
&
STELZNER,
P.A.
ATTORNEYS
AT LAW

NO. OF PAGES TO FOLLOW: 4

FROM: Elizabeth Newlin Taylor



RE: Legislation on the Ute Water Settlement/ALP Lite

DOCUMENT(S): Memo

NOTES: Stanley, here is the list of advantages that we discussed with you in San Diego. I hope it helps your clients see the broader picture. We look forward to any suggestions you have to move the issue forward. Please call if you need more information, or to discuss this. Thanks, Liz

OPERATOR: ss

Our Fax No. 1-505-842-8890

389.88.231

M E M O R A N D U M
CONFIDENTIAL ATTORNEY-CLIENT PRIVILEGE
ATTORNEY WORK PRODUCT

TO: Stanley Pollack
FROM: Elizabeth Newlin Taylor
DATE: March 4, 1998
RE: Advantages to the Navajo Nation of the Ute Water Settlement

We understand that the most significant issue for the Navajo Nation regarding the proposed amendment of the Colorado Ute water rights settlement act is the transfer of ownership of New Mexico State Engineer Permit No. 2883 from the federal government to the beneficiaries or the state of New Mexico.

The position of the San Juan Water Commission (SJWC) is that the transfer makes no real difference to the Navajo Nation, particularly considering that the amount of water at stake is only 5,000 acre feet per year (AFY). However, we recognize that the Navajo Nation does have some concerns. This document is intended to outline the tremendous benefits that weigh in favor of the Nation allowing this amendment to go forward, despite the misgivings you have, and offers a compromise whereby everyone wins.

The SJWC may consider an agreement with the Navajo Nation to defer the development of the water under the water permit until NIIP water is assured, or for a reasonable time, if that time period has a deadline. This gives the SJWC a planning date, and encourages the SJWC in the meantime to help the Navajo Nation secure its water for NIIP. The important thing is to keep the process moving for the Colorado Ute Indian Tribes. This amendment of the Colorado Ute Indian Water Rights Settlement Act sets a precedent for allotting water under reserve water rights settlements. It avoids competition among non-Indians, the Utes, the Navajos and the Jicarilla Apache Tribe. More importantly, it avoids the SJWC's need to compete for a supply on the main stem of the San Juan River. Finally, reaching agreement now between the Navajo Nation and the SJWC would avoid any potential conflict on the national level that could put our mutual friends, Sen. Domenici in particular, in a difficult position.

What follows is a more specific list of potential benefits for the Navajo Nation if the Colorado Ute settlement goes forward. For the ALP Lite to move forward, the legislation must include a transfer of water rights to the State of New Mexico and/or the SJWC. The SJWC has 10,400 AF of depletion already, and we need 5,000 more.

Benefits of Settling the Colorado Ute Claims:

1. ALP - Depletions -- Navajo receives almost a full supply at no cost.

Deferral of cost and no-cost for tribal depletions. Plus, the reservoir provides storage opportunities for Navajo beyond the initial allocations, which would allow for expansion of M&I supplies later.
2. The settlement and legislation create a valuable precedent for settlement of water claims by the Navajo:
 - a. M&I costs paid, instead of just agricultural costs.
 - b. No need to specify future use for water.
 - c. Idea of satisfactory compliance for environmental work already done.
3. Allows non-Indians to continue potable water supply to Shiprock.
4. Removes the SJWC's need to seek additional claims or water sources on the San Juan River.
5. Allows the SJWC to fully use the Animas instead of buying water on the San Juan River, which would require additional storage in Navajo Reservoir.
6. Avoids disruption of existing water relationships between non-Indians and the Navajo Nation.
7. Maintains comity among users.
8. The RIP goes forward if ALP goes forward and allows the non-Indian development community to support the RIP politically and financially, as well as with technical expertise.
9. We have the high ground on the Ute Settlement - to lose momentum now, the Utes lose momentum and the opportunity to move ALP forward in Congress.
10. Timing - if this effort fails, it will be at least next year before we can try again in Congress.
 - a. Lose education of many current congressmen because all of them will not be re-elected in 1998.

- b. The opponents of ALP and tribal settlements will be able to claim victory over the Utes.
- 11. Neither the Navajo Nation nor the SJWC wants to be the cause of the demise of the Colorado Ute water settlement.
- 12. The settlement may provide alternative opportunities for PNM and others to access depletions outside those currently available, which could be a significant benefit to the Navajo Nation.
- 13. Retains jobs for Navajos in regional economy.
- 14. ALP gives the Nation real water soon, for free, for M&I development - sets federal precedent for using deferred/no-cost funding for M&I water, which could be used for the Gallup-Navajo pipeline.

IF RIP proceeds:

- 15. Jicarillas closer to realizing their settlement.
- 16. SJWC helps Navajos get next block of depletions.
- 17. Preserves agriculture in Animas Valley. The SJWC's alternative if the ALP fails is for the SJWC to begin condemning farms for their water and seek alternatives for water that may compete with the Navajos' claims or uses.

The Washington Connection -- Avoiding Difficult Choices for our Allies:

- 18. Avoid animosity toward both us and the Navajo Nation if Sen. Pete Domenici, Rep. Bill Redmond and Sen. Jeff Bingaman are forced to decide between Navajo and the SJWC.
- 19. Gallup-Navajo pipeline depends on favorable Congressional action and support from the SJWC.
- 20. French-Fry Facility needs Congressional approval (WAPA power, etc.).

Projects on Which the SJWC can be Helpful:

- 21. French Fry Facility
 - a. Minor Water Depletions for the facility

- b. WAPA Power
 - c. Water Quality
22. Water Quality Issue -- the SJWC is prepared to present a case to relax the New Mexico standard for selenium, which will facilitate consultation for NIIP, because New Mexico stream standards will be considered by the EPA and F&WS in any consultation.
23. Comity among the Navajo Nation, New Mexico, and San Juan County.
24. NIIP:
- a. Support from SJWC could facilitate NIIP moving forward.
 - b. The local community has opportunities to assist the Nation in realizing the full development of NIIP in ways other than NIIP per se - e.g., roads, infrastructure.
 - c. Assistance to secure SJWC member entities' easements to access Navajo structures on the San Juan River.
25. Our support in the Navajo Nation's negotiations with New Mexico:
- a. We have received what we want, so we will be more likely to help the Navajos in their water rights negotiations.
 - b. Allows regional planning relationship to go forward and consider the needs of the San Juan Basin, including the Navajo Nation.
26. SJWC's motive is reduced to oppose downstream marketing. The SJWC is less likely to oppose it because the SJWC is whole.